



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1376

Introduced 2/10/2009, by Sen. Linda Holmes

SYNOPSIS AS INTRODUCED:

205 ILCS 670/15 from Ch. 17, par. 5415
815 ILCS 122/2-5
815 ILCS 122/2-41 new
815 ILCS 122/2-42 new

Amends the Consumer Installment Loan Act. Defines the terms "Class A loan", "Class B loan", "Class C loan", and "payday loan". Specifies the charges allowed for interest bearing and precomputed Class A loans and Class B loans. In the provisions concerning Class C loans, sets forth provisions concerning (1) loan amortization, (2) use of consumer reporting services in comportment with the Payday Loan Reform Act, (3) lenders' prohibited acts, (4) protections for members of the military in comportment with the Payday Loan Reform Act, (5) allowable fees in the case of a defaulted loan, (6) disclosure requirements, and (7) controlling terms of the Consumer Installment Loan Act. Amends the Payday Loan Reform Act. Provides that no payday loan may be made to a consumer if the loan would result in the consumer being indebted to one or more payday lenders for a period in excess of 56 consecutive days (now 45 consecutive days). Provides that no lender may charge more than \$17 per \$100 loaned (now \$15.50 per \$100 loaned). Provides that lenders may seek and may be awarded court costs, but not attorney's fees, in the event of a customer default on the repayment plan. Provides that lenders may seek and may be awarded court costs and attorney's fees when a customer is in default and refuses to enter into the repayment plan. Effective January 1, 2010.

LRB096 08911 MJR 19047 b

1 AN ACT concerning financial regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Consumer Installment Loan Act is amended by
5 changing Section 15 as follows:

6 (205 ILCS 670/15) (from Ch. 17, par. 5415)

7 Sec. 15. Charges permitted.

8 (a) Every licensee may lend a principal amount not
9 exceeding \$40,000 and may charge, contract for and receive
10 thereon interest at the rate agreed upon by the licensee and
11 the borrower, subject to the provisions of this Act.

12 (b) For purpose of this Section, the following terms shall
13 have the meanings ascribed herein.

14 "Applicable interest" for a precomputed loan contract
15 means the amount of interest attributable to each monthly
16 installment period. It is computed as if each installment
17 period were one month and any interest charged for extending
18 the first installment period beyond one month is ignored. The
19 applicable interest for any monthly installment period is that
20 portion of the precomputed interest that bears the same ratio
21 to the total precomputed interest as the balances scheduled to
22 be outstanding during that month bear to the sum of all
23 scheduled monthly outstanding balances in the original

1 contract.

2 "Class A loan" means a loan secured by an interest in real
3 estate or the title to a motor vehicle.

4 "Class B loan" means a loan with an original principal
5 amount advanced (including any amounts deducted or retained by
6 lender) of \$3,000 or more.

7 "Class C loan" means a loan with an original principal
8 amount advanced (including any amounts deducted or retained by
9 lender) of less than \$3,000.

10 "Interest-bearing loan" means a loan in which the debt is
11 expressed as a principal amount plus interest charged on actual
12 unpaid principal balances for the time actually outstanding.

13 "Payday loan" means a loan made pursuant to the Payday Loan
14 Reform Act.

15 "Precomputed loan" means a loan in which the debt is
16 expressed as the sum of the original principal amount plus
17 interest computed actuarially in advance, assuming all
18 payments will be made when scheduled.

19 (c) Loans may be interest-bearing or precomputed.

20 (d) To compute time for either interest-bearing or
21 precomputed loans for the calculation of interest and other
22 purposes, a month shall be a calendar month and a day shall be
23 considered 1/30th of a month when calculation is made for a
24 fraction of a month. A month shall be 1/12th of a year. A
25 calendar month is that period from a given date in one month to
26 the same numbered date in the following month, and if there is

1 no same numbered date, to the last day of the following month.
2 When a period of time includes a month and a fraction of a
3 month, the fraction of the month is considered to follow the
4 whole month. In the alternative, for interest-bearing loans,
5 the licensee may charge interest at the rate of 1/365th of the
6 agreed annual rate for each day actually elapsed.

7 (e) With respect to interest-bearing Class A loans and
8 Class B loans:

9 (1) Interest shall be computed on unpaid principal
10 balances outstanding from time to time, for the time
11 outstanding, until fully paid. Each payment shall be
12 applied first to the accumulated interest and the remainder
13 of the payment applied to the unpaid principal balance;
14 provided however, that if the amount of the payment is
15 insufficient to pay the accumulated interest, the unpaid
16 interest continues to accumulate to be paid from the
17 proceeds of subsequent payments and is not added to the
18 principal balance.

19 (2) Interest shall not be payable in advance or
20 compounded. However, if part or all of the consideration
21 for a new loan contract is the unpaid principal balance of
22 a prior loan, then the principal amount payable under the
23 new loan contract may include any unpaid interest which has
24 accrued. The unpaid principal balance of a precomputed loan
25 is the balance due after refund or credit of unearned
26 interest as provided in paragraph (f), clause (3). The

1 resulting loan contract shall be deemed a new and separate
2 loan transaction for all purposes.

3 (3) Loans may be payable as agreed between the parties,
4 including payment at irregular times or in unequal amounts
5 and rates that may vary with an index that is independently
6 verifiable and beyond the control of the licensee.

7 (4) The lender or creditor may, if the contract
8 provides, collect a delinquency or collection charge on
9 each installment in default for a period of not less than
10 10 days in an amount not exceeding 5% of the installment on
11 installments in excess of \$200, or \$10 on installments of
12 \$200 or less, but only one delinquency and collection
13 charge may be collected on any installment regardless of
14 the period during which it remains in default.

15 (f) With respect to precomputed Class A loans and Class B
16 loans:

17 (1) Loans shall be repayable in substantially equal and
18 consecutive monthly installments of principal and interest
19 combined, except that the first installment period may be
20 longer than one month by not more than 15 days, and the
21 first installment payment amount may be larger than the
22 remaining payments by the amount of interest charged for
23 the extra days; and provided further that monthly
24 installment payment dates may be omitted to accommodate
25 borrowers with seasonal income.

26 (2) Payments may be applied to the combined total of

1 principal and precomputed interest until the loan is fully
2 paid. Payments shall be applied in the order in which they
3 become due, except that any insurance proceeds received as
4 a result of any claim made on any insurance, unless
5 sufficient to prepay the contract in full, may be applied
6 to the unpaid installments of the total of payments in
7 inverse order.

8 (3) When any loan contract is paid in full by cash,
9 renewal or refinancing, or a new loan, one month or more
10 before the final installment due date, a licensee shall
11 refund or credit the obligor with the total of the
12 applicable interest for all fully unexpired installment
13 periods, as originally scheduled or as deferred, which
14 follow the day of prepayment; provided, if the prepayment
15 occurs prior to the first installment due date, the
16 licensee may retain 1/30 of the applicable interest for a
17 first installment period of one month for each day from the
18 date of the loan to the date of prepayment, and shall
19 refund or credit the obligor with the balance of the total
20 interest contracted for. If the maturity of the loan is
21 accelerated for any reason and judgment is entered, the
22 licensee shall credit the borrower with the same refund as
23 if prepayment in full had been made on the date the
24 judgement is entered.

25 (4) The lender or creditor may, if the contract
26 provides, collect a delinquency or collection charge on

1 each installment in default for a period of not less than
2 10 days in an amount not exceeding 5% of the installment on
3 installments in excess of \$200, or \$10 on installments of
4 \$200 or less, but only one delinquency or collection charge
5 may be collected on any installment regardless of the
6 period during which it remains in default.

7 (5) If the parties agree in writing, either in the loan
8 contract or in a subsequent agreement, to a deferment of
9 wholly unpaid installments, a licensee may grant a
10 deferment and may collect a deferment charge as provided in
11 this Section. A deferment postpones the scheduled due date
12 of the earliest unpaid installment and all subsequent
13 installments as originally scheduled, or as previously
14 deferred, for a period equal to the deferment period. The
15 deferment period is that period during which no installment
16 is scheduled to be paid by reason of the deferment. The
17 deferment charge for a one month period may not exceed the
18 applicable interest for the installment period immediately
19 following the due date of the last undeferred payment. A
20 proportionate charge may be made for deferment for periods
21 of more or less than one month. A deferment charge is
22 earned pro rata during the deferment period and is fully
23 earned on the last day of the deferment period. Should a
24 loan be prepaid in full during a deferment period, the
25 licensee shall credit to the obligor a refund of the
26 unearned deferment charge in addition to any other refund

1 or credit made for prepayment of the loan in full.

2 (6) If two or more installments are delinquent one full
3 month or more on any due date, and if the contract so
4 provides, the licensee may reduce the unpaid balance by the
5 refund credit which would be required for prepayment in
6 full on the due date of the most recent maturing
7 installment in default. Thereafter, and in lieu of any
8 other default or deferment charges, the agreed rate of
9 interest may be charged on the unpaid balance until fully
10 paid.

11 (7) Fifteen days after the final installment as
12 originally scheduled or deferred, the licensee, for any
13 loan contract which has not previously been converted to
14 interest-bearing under paragraph (f), clause (6), may
15 compute and charge interest on any balance remaining
16 unpaid, including unpaid default or deferment charges, at
17 the agreed rate of interest until fully paid. At the time
18 of payment of said final installment, the licensee shall
19 give notice to the obligor stating any amounts unpaid.

20 (g) With respect to Class C loans:

21 (1) The loan document shall provide for a repayment
22 schedule that fully amortizes the loan in substantially
23 equal periodic payments of principal and interest
24 regardless of the length of the loan. Loans requiring a
25 balloon payment of the loan principal at maturity are
26 prohibited by this Act.

1 (2) The loan document shall not require a penalty or
2 premium for prepayment of the balance of the indebtedness.

3 (3) Lenders shall use a consumer reporting service
4 established by the Division of Financial Institutions of
5 the Department of Financial and Professional Regulation to
6 verify that the Class C loan would not conflict with the
7 Payday Loan Reform Act. A Class C loan may not be issued if
8 the borrower currently has a payday loan or if they are in
9 any cooling-off period or repayment plan of a payday loan.

10 (4) Lenders are prohibited from doing any of the
11 following:

12 (A) Threatening to use or using the criminal
13 process of this State or any other state to collect on
14 a loan made pursuant to this Act.

15 (B) Including any of the following provisions in a
16 loan document:

17 (i) a confession of judgment clause;

18 (ii) a waiver of the right to a jury trial, if
19 applicable, in any action brought by or against a
20 borrower, unless the waiver is included in an
21 arbitration clause that is allowable under the
22 Payday Loan Reform Act;

23 (iii) a mandatory arbitration clause that is
24 oppressive, unfair, unconscionable, or
25 substantially in derogation of the rights of the
26 borrower; or

1 (iv) a provision in which the borrower agrees
2 not to assert any claim or defense arising out of
3 the contract.

4 (C) Taking any interest in real estate in
5 connection with a loan agreement.

6 (5) Lenders must comply with all protections given to
7 members of the military by the Payday Loan Reform Act.

8 (6) In the case of a default of a Class C loan, no
9 additional fees or interest charges of any kind may be
10 charged to the borrower except for actual court costs that
11 have been awarded to the lender by a court judgment and a
12 one-time fee not to exceed \$25 if a borrower's check or an
13 electronic debit is returned unpaid by the borrower's
14 financial institution. No attorney's fees or treble damage
15 awards may be charged or awarded.

16 (7) The lender must provide the borrower with
17 disclosures approved by the Director and substantially
18 similar to those found in subsections (a) and (b) of
19 Section 2-20 of the Payday Loan Reform Act.

20 (8) The lender must make available financial literacy
21 education materials approved by the Director.

22 (9) In the case of a conflict between the terms of this
23 subsection (g) and the terms of subsections (a) through (f)
24 of this Section, the terms of this subsection (g) shall
25 control.

26 (Source: P.A. 93-264, eff. 1-1-04.)

1 Section 10. The Payday Loan Reform Act is amended by
2 changing Section 2-5 and by adding Sections 2-41 and 2-42 as
3 follows:

4 (815 ILCS 122/2-5)

5 Sec. 2-5. Loan terms.

6 (a) Without affecting the right of a consumer to prepay at
7 any time without cost or penalty, no payday loan may have a
8 minimum term of less than 13 days.

9 (b) No payday loan may be made to a consumer if the loan
10 would result in the consumer being indebted to one or more
11 payday lenders for a period in excess of 56 ~~45~~ consecutive
12 days. Except as provided under Section 2-40, if a consumer has
13 or has had loans outstanding for a period in excess of 56 ~~45~~
14 consecutive days, no payday lender may offer or make a loan to
15 the consumer for at least 7 calendar days after the date on
16 which the outstanding balance of all payday loans made during
17 the 56 ~~45~~ consecutive day period is paid in full. For purposes
18 of this subsection, the term "consecutive days" means a series
19 of continuous calendar days in which the consumer has an
20 outstanding balance on one or more payday loans; however, if a
21 payday loan is made to a consumer within 6 days or less after
22 the outstanding balance of all loans is paid in full, those
23 days are counted as "consecutive days" for purposes of this
24 subsection.

1 (c) No lender may make a payday loan to a consumer if the
2 total principal amount of the loan, when combined with the
3 principal amount of all of the consumer's other outstanding
4 payday loans, exceeds \$1,000 or 25% of the consumer's gross
5 monthly income, whichever is less.

6 (d) No payday loan may be made to a consumer who has an
7 outstanding balance on 2 payday loans.

8 (e) No lender may charge more than \$17 ~~\$15.50~~ per \$100
9 loaned on any payday loan over the term of the loan. Except as
10 provided in Section 2-25, this charge is considered fully
11 earned as of the date on which the loan is made.

12 (f) A lender may not take or attempt to take an interest in
13 any of the consumer's personal property to secure a payday
14 loan.

15 (g) A consumer has the right to redeem a check or any other
16 item described in the definition of payday loan under Section
17 1-10 issued in connection with a payday loan from the lender
18 holding the check or other item at any time before the payday
19 loan becomes payable by paying the full amount of the check or
20 other item.

21 (Source: P.A. 94-13, eff. 12-6-05.)

22 (815 ILCS 122/2-41 new)

23 Sec. 2-41. Repayment plan default. Notwithstanding any
24 other provision of this Act to the contrary, lenders may seek
25 and may be awarded court costs, but not attorney's fees, in the

1 event of a customer default on the repayment plan as described
2 in Section 2-40 of this Act.

3 (815 ILCS 122/2-42 new)

4 Sec. 2-42. Refusal to enter into repayment plan after
5 default. Notwithstanding any other provision of this Act to the
6 contrary, lenders may seek and may be awarded court costs and
7 attorney's fees when a customer is in default and refuses to
8 enter into the repayment plan as described in Section 2-40 of
9 this Act.

10 Section 99. Effective date. This Act takes effect January
11 1, 2010.